

# Free Flow of Information Act

H.R. 581, Free Flow of Information Act

Freedom of the press is a cornerstone of our democracy, and our Founding Fathers understood that an informed citizenry is essential to keeping the government accountable to its people. They fully intended to give our young republic a degree of press freedom unexperienced elsewhere in the world. Thomas Jefferson in fact said that "our liberty depends on the freedom of the press, and it cannot be limited without being lost."

Journalists play an essential role in informing our society. They not only report news and information to the public, but also serve as watchdogs, investigating and exposing what are often illegal, unethical or dangerous activities by both public and private sector actors. But to do that job effectively, journalists sometimes must rely on sources who do not want their identities revealed for fear of personal safety, retaliation by employers, ostracism by friends and neighbors or extreme embarrassment. Earlier this year, confidential sources provided information that led reporters to break stories implicating baseball players Barry Bonds and Jason Giambi in a steroid scandal. Undisclosed sources were also essential to the writing of a story about a Chicago charity accused of funneling money to Islamic terrorists.

And yet, in these situations and many more like them, federal prosecutors and judges are attempting to force journalists to reveal their sources rather than finding wrongdoers through their own investigations into reported activities. They have used the threat of jail time to pressure reporters into violating the promises of confidentiality they made to their sources as a condition of receiving the information at the core of their stories. In some instances reporters have actually been jailed for keeping their promises not to divulge the identity of sources.

Last year twelve journalists were threatened with jail sentences in federal courts for refusing to identify confidential news sources. In notable current cases, journalists for Time magazine and The New York Times face jail time. The effect of such actions can only be to limit the willingness of crucial witnesses to speak to reporters, which hampers journalists' work and chills free speech and the availability of public information. Most confidential sources have a lot to lose if their identities are revealed. Understandably, if a source knows that the reporter in whom he confides can be jailed until he reveals the source's identity, the source will be much more reluctant to share vital information than if he knows that the reporter cannot be forced to disclose the source's name.

Action is needed to protect the promise of confidentiality between reporters and their sources from the current unprecedented series of government challenges. The public's right to know hangs in the balance because if the identity of sources is not protected, many matters of public importance will not become known.

I would prefer that the courts interpret the First Amendment so as to provide to reporters a privilege to refrain from revealing confidential sources in court proceedings. Unfortunately, the courts have declined to do so on numerous occasions in which the opportunity to provide a shield has been presented.

For this reason, thirty-one states and the District of Columbia currently have enacted statutes that protect reporters from the compelled disclosure of their information sources. The absence of similar protection at the federal level is striking.

To provide the federal response, my colleague from Indiana Representative Mike Pence and I have introduced the Free Flow of Information Act in Congress. Senators Lugar and Dodd have introduced an identical bill in the Senate. We propose to set strict limits on the ability of the Department of Justice or a private party to subpoena a reporter in a federal case. Our bill grants a complete privilege for reporters who are subpoenaed to refrain from revealing their confidential sources. It carefully balances the public interest in the free flow of information against the public interest in compelled testimony.

I decided to introduce this measure because I firmly believe that the public's right to know which is furthered by the confidential source shield statute should outweigh the more narrow interest in the administration of justice in a particular federal case. In many instances, the critical information which first alerts federal prosecutors to potentially illegal activity or alerts civil litigants to the facts giving rise to a private civil case is contained in a news story which could only have been reported upon assurance of anonymity to a source. That anonymity must be protected.

By protecting reporters and their confidential sources, the Free Flow of Information Act will encourage whistleblowers to talk to journalists and expose wrongdoing. It will ensure that journalists can continue to do what they have done since our Nation's founding - to exercise the freedom of the press to bring important information to light. As Thomas Jefferson recognized, our liberty and our democracy are dependent on a free and fully functioning press. Our bill will help underpin this Nation's tradition of honoring press freedom as a hallmark of our open and informed society.